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Nov 25 2009	Record received from Office of the County Clerk, Wayne County, Michigan (1 envelope).
Nov 30 2009	DISTRIBUTED for Conference of December 4, 2009.
Dec 7 2009	The petition for certiorari is GRANTED. The judgment of the Michigan Court of Appeals is REVERSED, and the case is REMANDED for further proceedings not inconsistent with this opinion. Justice Stevens filed a dissenting opinion in which Justice Sotomayor joins. Opinion per curiam. (Detached Opinion)

PETITION FOR WRIT OF CERTIORARI

133

(1)

Supreme Court, U.S.
FILED

09-91 JUL 15 2009

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2008
No.

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

JEREMY FISHER,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE QUESTIONS

I.

Police officers do not violate the Fourth Amendment by entering a home without a warrant if it is reasonable to believe someone inside may need immediate assistance. In responding to a reported disturbance, police officers here discovered (a) a smashed truck, with fresh blood inside and out, near broken fence posts, (b) a house with broken windows and blood on the door, and (c) an unknown man inside who was screaming and breaking things and who refused to identify himself—and so an officer entered without a warrant. Is the Michigan Court of Appeals' holding that entry was impermissible absent evidence of a serious and life-threatening injury inconsistent with *Brigham City v. Stuart*?

II.

Regardless whether a warrantless entry into a residence is justified, the Fourth Amendment does not give occupants of the house the right to assault the entering police. As the officer was attempting to enter respondent's house, respondent aimed a gun at him. Is respondent's assault excused by the Fourth Amendment?

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IN THE
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OCTOBER TERM, 2008

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

JEREMY FISHER,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE **MICHIGAN COURT OF APPEALS**

NOW COMES the State of Michigan, by KYM L. WORTHY, *Prosecuting Attorney for the County of Wayne*, TIMOTHY A. BAUGHMAN, *Chief of Research, Training, and Appeals*, and DAVID A. MCCREEDY, *Assistant Prosecuting Attorney*, and prays that a Writ of Certiorari issue to review the judgment of the Michigan Court of Appeals, entered in this cause on May 15, 2008, with an order granting leave vacated by the Michigan Supreme Court on May 22, 2009.

OPINIONS BELOW

The opinion of the Michigan Court of Appeals is unpublished, and appears as Appendix A. The order of the Michigan Supreme Court vacating leave to appeal appears as Appendix B.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 USC §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

On October 31, 2003, Brownstown Township police officers responded to a complaint of a disturbance in the area of Steven Road and Allen Road in Brownstown, Michigan. 12.19.06, 4. Officer Christopher Goolsby of the Brownstown Police Department testified at a suppression hearing that, while en route, he and his partner were stopped by two citizens who were out walking. The female of the pair, who gave her name, indicated that a man over on Allen Road was "going crazy," and she directed the officers to the location. Id., 6-7.

Upon arriving at the Allen Road address, Officer Goolsby noticed a pickup in the driveway with its front end smashed, knocked-down fence posts along the side of the property (id., 8), fresh blood on the hood of the truck, and blood on clothes inside the truck. Id., 9. Goolsby also observed that three of the windows to the house there were broken, with glass still on the ground. Id., 10. There was more blood on the back door to the house. Id. Goolsby concluded from the above that someone inside was obviously hurt. Id., 11.

The only person officers could see from outside of the home was respondent, who was inside screaming and throwing things. Id., 7. Officer Goolsby did not know if the house in question was respondent's residence (id., 8), and respondent refused to come to the door or identify himself. Id., 9, 11. Neither would he indicate what the problem was or answer whether he or anyone else needed medical attention. Id., 11. Instead, he repeatedly swore at the officers and told them to get a warrant. Id. Goolsby was not sure at the evidentiary hearing, since three years had passed since the incident, but he believed that respondent did have a cut on his hand. Id.

Given the circumstances, the officers called the detective bureau to determine their next course of action. Id., 12 (by this time, the patrol officers had been joined by a sergeant). They were advised to enter the residence to determine (a) if someone else inside was severely injured, and (b) whether respondent was the homeowner or an intruder. Id., 13, 34-35. (This point was made in part via an offer of proof, given the trial court's ruling that Officer Goolsby's motivation for attempting to enter the home was irrelevant, see id., 12.) Respondent had locked the back door and pushed a couch against the front door. Id., 13. Goolsby then pushed on the front door, but he couldn't get it open far enough to enter. Id., 14. He could see inside, however, and a dog's bark drew his attention to a bedroom to his right. Id., 14-15. When Goolsby looked in that direction, respondent pointed a rifle at him. Id., 15. Goolsby pulled his head back, and made no more attempts to enter. Id.

Respondent was charged with felonious assault and possession of a firearm during a felony based on these facts. The trial court granted respondent's motion to quash the information, despite the fact that he had waived his preliminary examination. The court held that the police had illegally opened respondent's door and that any evidence obtained after the illegal entry—that is, Officer Goolsby's view of respondent pointing a gun at him—must be suppressed. 4.30.04, 9. Because there was no other evidence of respondent's criminal conduct, the trial court dismissed the charges against respondent that same day. Id.

The People appealed, and on December 20, 2005, a divided panel of the Michigan Court of Appeals reversed and remanded, holding that the trial court erred by ruling on respondent's motion

without the benefit of an evidentiary hearing. On remand, the trial judge again suppressed the evidence, ruling that the entry could not be justified under the emergency circumstances exception to the warrant requirement of the Fourth Amendment. 12.19.06, 29.

The Court of Appeals again granted leave to appeal, and, in a two to one ruling, upheld the trial court. According to the per curiam opinion, "the mere drops of blood did not signal a likely serious, life-threatening injury" and thus the attempted entry violated respondent's Fourth Amendment rights. On May 15, 2008, the same panel rejected the People's motion for reconsideration.

The Michigan Supreme Court initially granted leave to appeal, accepted briefs, and heard oral argument, but then reconsidered its decision and, on May 22, 2009, vacated the order granting leave, with three Justices dissenting. This petition ensues.

REASONS FOR GRANTING THE WRIT

I. A. Because the decision of the Michigan Court of Appeals in this case is in direct conflict with *Brigham City v. Stuart*, 547 US 398 (2006).

The police in this case faced a similar circumstance as the officers in *Brigham City v Stuart*, 547 US 398, 126 S Ct 1943 (2006), and, where the facts differ, those here are more compelling, and thus provide a greater justification for a warrantless entry than in *Brigham City*. Moreover, state supreme courts and U.S. Courts of Appeals around the country have upheld warrantless entries under far less-serious circumstances as here. Clearly, the Michigan Court of Appeals was wrong to suppress respondent's assault against Officer Goolsby on Fourth Amendment grounds.

In *Brigham City*, officers responded to a 3 a.m. complaint about a loud party. Upon arrival, they heard shouting from inside the subject house, and, proceeding around back to investigate, observed an altercation through a screen door and windows. More specifically, they watched as a juvenile, being restrained by four adults, broke free and punched one of the adults in the face. The police then saw the adult spit blood into the sink. As the adults tried to regain control over the juvenile, the police entered through the screen door and stopped the melee. Once inside, they discovered evidence with which to charge some of the adults with contributing to the delinquency of a minor, disorderly conduct, and intoxication. Those charged attempted to have the evidence suppressed because the police had entered

without a warrant, and all the Utah courts, from the trial court to the Utah Supreme Court, agreed.[1]

This Court, in a unanimous decision, reversed, holding that exigent circumstances—namely the need to provide emergency aid—justified the entry.[2] That is, although the Fourth Amendment normally requires that a search warrant be issued before the police can enter a private home, the warrant requirement is subject to exceptions.[3] One such exception arises when the police are called on "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury."[4] This is true even when the police also intend, upon entering, to investigate crime. As the Court has pointed out numerous times, the subjective motivations of police officers are irrelevant in the Fourth Amendment context.[5] What matters is whether, objectively speaking, their actions were reasonable under the circumstances.[6] And, it is objectively reasonable for the police to enter a home

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[1] *Id.* at 400-01, 1946.

[2] *Id.* at 406, 1949.

[3] *Id.* at 403, 1947.

[4] *Id.* (Actually, emergency aid is not an exception to the warrant requirement. It falls outside the warrant clause of the Fourth Amendment, but within the reasonableness clause, as explained in section I.B, *infra*. This is in part because it is not usually possible to demonstrate probable cause.)

[5] *Id.* at 404, 1948 (see cases cited therein).

[6] *Id.* at 404-05, 1948.

where they observe ongoing violence toward one of the occupants.[7]

Moreover, according to this Court in *Brigham City*, it did not matter that the victim might not *actually* need help, having suffered what apparently was only a bloody lip. To the contrary, "the officers had an objectively reasonable basis for believing both that the injured adult *might* need help and that the violence in the kitchen was just beginning."[8] Because reasonableness is "the ultimate touchstone of the Fourth Amendment,"[9] and because the officers' entry was reasonable under the circumstances, it was justified under the emergency-assistance doctrine.[10]

Cases from the US Courts of Appeals and state supreme courts around the country confirm the implicit holding of *Brigham City*: that any reasonable inference that someone inside a dwelling may need emergency assistance justifies a warrantless entry. One such example is *United States v Najar*, 451 F3d 710 (CA 10, 2006). A police dispatcher had received an early-morning 911 call, but the caller said nothing and hung up. The dispatcher then called the number back several times, only to have the caller silently answer the phone and repeatedly hang up. Officers sent to investigate knocked on the door of the mobile home and, although no one answered, a person could be seen and heard moving around inside. Eventually, the defendant answered the door, but he denied

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[7] *Id.* at 405-06, 1949.

[8] *Id.* at 406, 1949 (emphasis added).

[9] *Id.* at 403, 1947.

[10] *Id.* at 406, 1949.

making the call and maintained that there was no one else inside.[11] Despite the defendant's representations that nothing was wrong, and his objection to the officers' request to come in, the police entered in order to determine if someone else was inside and, if so, whether they needed immediate aid. Once inside, the officers found an illegal shotgun. The court found, under the circumstances, that "the officers had reasonable grounds to believe someone inside the trailer *may* have been in need of emergency aid" and thus the warrantless entry was permissible.[12]

Similarly, the Eleventh Circuit ruled in *United States v Holloway*, 290 F3d 1331 (2002), that the police could enter the defendant's home without a warrant because they were looking for a possible shooting victim, even though they had no information that anyone had actually been shot or even that someone they had not already seen was in the house. In that case, the officers responded to two 911 reports of gunshots fired. Arriving at the defendant's residence, they found him and his wife on the porch. Neither was injured. As the couple was being ordered off the porch, a child appeared in the doorway, uninjured, who was ordered back inside. Once the defendant and his wife had been secured, one of the officers entered the house to check for victims and weapons, finding an illegal shotgun but no one who was hurt.[13] The Court of Appeals upheld the warrantless entry, finding that "the *possibility* of a gunshot victim lying prostrate in the dwelling

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[11] *Najar*, *supra*, at 712.

[12] *Id.* at 720 (emphasis added).

[13] *Holloway*, *supra*, at 1332-33.

created an exigency necessitating immediate search."[14]

Nearly every other circuit has a similar case. In the Ninth, for example, the police were justified in entering a defendant's home when his ex-girlfriend (whom they had agreed to help retrieve her belongings from the defendant's apartment after he had beaten her up that morning) was not present when they arrived, but the defendant was.[15] Reasonably believing that the defendant could have surprised the ex-girlfriend, dragged her back into the apartment, beaten her, and left her severely injured, the police went in to look for her even though they did not have a warrant, and the court found this proper.[16]

In the Eighth, officers reasonably believed a shooting victim could have been inside the defendant's apartment, after neighbors had heard several shotgun blasts emanating from the apartment, even though the defendant had told them there was no one in the apartment, and the officers had no contrary information.[17] "Viewing the circumstances objectively, these facts create clear justification for a reasonable law-enforcement officer to enter the apartment without a warrant to secure the shotgun and to discern if the shooter or any victims in need of medical attention remained

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[14] *Id.* at 1338 (emphasis added).

[15] *United States v Black*, 482 F3d 1035, 1039 (CA 9, 2007).

[16] *Id.*

[17] *United States v Valencia*, 499 F3d 813, 814-15 (CA 8, 2007).

inside."[18] It is clear from these and other cases[19] that officers may make a warrantless entry into a home if there is *any* reasonable inference that someone may be injured inside, even in the face of contrary indications that no one is hurt.

At the risk of belaboring the point, Petitioner notes that cases decided in the highest state courts around the country are no different. For example, citing *Brigham City v Stuart*, Nebraska's Supreme Court upheld a warrantless entry of the defendant's home because a neighbor had heard a loud bang and seen two likely burglars flee the house.[20] The officers could reasonably believe that additional suspects or occupants remained in the house, needing assistance, despite the fact that two men had already been seen leaving, and the neighbor indicated that the homeowners were gone.[21] According to the high court, "the officers could not be sure that no one

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[18] *Id.* at 816.

[19] See, for example, *United States v Klump*, 536 F3d 113, 118 (CA 2, 2008) (smell of something burning); *West v Keef*, 479 F3d 757, 759 (CA 10, 2007) (12-year-old boy called 911 to report that his mother was "going crazy" and was "trying to kill herself"); *United States v Martins*, 413 F3d 139, 148 (CA 1, 2005) (young boy answered door to apartment, and officers saw it was filled with marijuana smoke); *United States v Goree*, 361 United States App DC 161, 365 F3d 1086 (2004) (report that man had dragged woman into apartment by her hair); *United States v Reed*, 935 F2d 641, 643 (CA 4, 1991) (officers saw unresponsive person through window, next to sawed-off shotgun).

[20] *State v Eberly*, 716 NW2d 671, 678 (Neb, 2006).

[21] *Id.* at 680.

remained inside,"[22] and thus were justified in entering. Similarly, in Wyoming, officers validly entered the home of a paramedic, half an hour after receiving a garbled transmission from her, because there had been some urgency in her voice and no one answered her door when the police knocked.[23]

And in a case with remarkably similar facts as this one, the South Dakota Supreme Court upheld a warrantless entry of an apartment house because—while investigating a report of a possible burglary in progress—the police found a resident outside the building with a fresh cut on his hand and blood on his clothing.[24] The man, Corbine, claimed that he lived in the apartment building, but his driver's license listed another address. And, although he maintained that his girlfriend of six months was currently in the apartment, he could not initially remember her name. Additionally, the officers noticed that a window to the apartment was broken. Although Corbine had a key to the apartment which he produced for the officers, they still reasonably suspected that he could be a burglar, and that a "possible assault victim" may have been inside.[25] Given this, "the police officers were objectively justified in entering the house and apartment in order to check on the well-being of persons inside."[26]

Far from being the exception, cases like this—where the police reasonably fear that someone

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[22] *Id.*

[23] *Moulton v State*, 148 P3d 38, 41, 44 (Wy, 2006).

[24] *State v Bowker*, 754 NW2d 56 (SD, 2008).

[25] *Id.* at 60.

[26] *Id.* at 64.

inside *might* be injured, without any *actual* knowledge that anyone is *actually* inside or that anyone is *actually* injured—are common across the country. State supreme courts in California,[27] New York,[28] Ohio,[29] Massachusetts,[30] Minnesota,[31] and others[32] have followed suit.

Thus, the non-seizure directed entry here was clearly justified under the emergency-aid doctrine. Brownstown police officers were dispatched to

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[27] *People v Ray*, 981 P2d 928 (1999) (officers saw through open door of residence that it looked ransacked, and reasonably believed that burglars may have left behind an injured occupant).

[28] *People v Mitchell*, 347 NE2d 607 (1976) (search of every room in hotel, including defendant's, reasonable to find missing maid).

[29] *State v Applegate*, 626 NE2d 942 (1994) (responding to report of domestic violence, officers heard "noises indicating that violent activity was occurring inside.")

[30] *Massachusetts v Young*, 416 NE2d 944 (1981) (after finding dead body, blood trail led police to defendant's apartment).

[31] *State v Lemieux*, 726 NW2d 783 (2007) (house near homicide scene had torn window screen with window pushed up, police heard music skipping inside, and no one answered their yells inside).

[32] See, among others, *Blake v State*, 954 A2d 315 (Del, 2008) (officers outside a suspect's apartment heard a boom, and entered when a baby's crying inside turned to a "blood curdling scream"); *State v Bookheimer*, 656 SE2d 471 (W Va, 2007) (investigating a report of domestic violence with shots fired, officers found the agitated defendant outside; although she told them there was nothing wrong, their entry to see if her co-tenant might be injured was reasonable).

investigate a disturbance on or near Allen Road. While the police were en route, a named citizen said that a man was "going crazy" and directed them to the house in question. Arriving at the residence, the officers discovered a vehicle with a smashed front end near broken-down fence posts. Fresh blood was in and on the truck as well as on the door to the house. Three of the house windows were smashed, and there was someone inside—who, for all the police knew, may have been an intruder—screaming and breaking things. Although that individual may have had a cut hand, the amount of blood observed outside and the suspect's refusal to respond when asked whether he or anyone else needed medical attention caused the officers to believe that someone else may have needed medical attention.

Indeed, as the Michigan Court of Appeals and Supreme Court dissents recognized, respondent's own bizarre behavior provided a reasonable and articulable basis for the officers to conclude that he himself might have sustained internal injuries that needed medical care, or that he may have required psychiatric intervention to prevent him from incurring further injury or harming someone else.

Either way, respondent was inside the house breaking things, screaming, and refusing to communicate what was going on. If it wasn't his residence, he was committing a home invasion and destroying someone else's property. If it was his house, his erratic behavior suggested an injury more serious than a cut hand. Further, his refusal to say whether anyone else inside needed help gave rise to an inference that a passenger may have been injured in the crash, who respondent did not want the police to discover. But even if the police had known that respondent was alone, the officers were still justified in believing that he may have needed assistance.

Under these circumstances, the police not only had an objectively reasonable basis for believing that someone might need emergency assistance inside, they actually had probable cause to believe that respondent needed physical or mental help.

Correspondingly, knowing that someone was injured and seeing respondent's erratic behavior, the police would have been derelict in their duty *not* to have attempted to gain entry under these circumstances. As the New Jersey court observed in *State v Castro*, 570 A2d 40 (1990), there would be nothing more likely to chill diligent police efforts to preserve life than to require officers like Officer Goolsby to wait for a warrant before attempting to find out if respondent or someone else needed immediate aid.

In fact, if probable cause was both necessary and lacking, as Judge Jackson and the Court of Appeals seemed to hold, then the police here were left with no option but to leave the scene altogether, ignoring the possibility that respondent would die, destroy the house, or prevent an injured passenger from receiving aid. California's Supreme Court has noted that excluding the evidence in cases such as this "will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty."[33] Thus, in the event that this holding stands, "we might reasonably anticipate the assistance role of law enforcement in this society will go downhill. . . . In the future police will tell such concerned citizens,

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[33] *People v Ray*, *supra*, at 939 (internal ellipsis and quotation marks omitted).

'Sorry. We can't help you. We need a warrant and can't get one.'"[34] The Fourth Amendment in no way requires such an absurd result.

Unfortunately, in the Court of Appeals, instead of hewing to the emergency-aid doctrine established around the country, the majority glossed over the above facts, ignored the relevant caselaw, and held that, because "the mere drops of blood did not signal a likely serious, life-threatening injury," the police entry into the dwelling was not justified by the emergency-aid exception and therefore that it violated respondent's Fourth Amendment rights. But, as clearly demonstrated above, a "likely serious, life-threatening injury" is not required under the emergency-aid exception. The relevant cases hold that all that is required is a reasonable belief that a person within *may be* in need of immediate aid. Not only did the per curiam opinion below fail to mention these cases, the majority did not cite a single authority holding that proof-positive of a serious, life-threatening injury is required before the police may make a warrantless emergency entry. In fact, none exists.

Nor can respondent justify the Court of Appeals' ruling by arguing that, because he told officers to "get a warrant," he was communicating that he was the homeowner and that no emergency existed, and thus none did. Even assuming that "get a warrant" could be construed this way, it would not have the import he desires. Although the police must consider all circumstances when determining whether an emergency entry is reasonably necessary—including statements made by civilians at the scene—officers are certainly not required to

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[34] *Id.* (internal ellipsis omitted).

blindly accept the assurances of a possible burglar, or of someone with a potential mental problem, or of a person who is obviously injured in at least some regard, that all is well.

In fact, in many of the cases detailed above,[35] someone at the scene attempted to assuage the officers' concern that a person inside the residence might be injured. In every single case, the police were justified in entering anyway. Like Mr. Corbine in *Bowker*, respondent here was hardly credible even if what he was saying was that the police were not needed. Recall that Corbine claimed he lived at the apartment he was outside of and had a working key, but a window was broken and he had a cut hand, his ID indicated a different address, and he could not initially remember the name of the girlfriend he said was currently inside the apartment.[36]

Respondent here also may have sported a cut hand in a house with windows broken.[37] Additionally, someone had crashed a truck in the front yard and respondent was the most likely suspect since the blood trail led from the automobile to the house in which he was standing. And respondent would not respond when asked (a) who he

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[35]See *State v Bowker*, 754 NW2d 56 (SD, 2008); *United States v Gambino-Zavala*, 539 F3d 1221 (2008); *United States v Valencia*, 499 F3d 813 (CA8, 2007); *State v Bookheimer*, 656 SE2d 471 (W Va, 2007); *Guererri v State*, 922 A2d 403 (Del, 2007); *United States v Najar*, 451 F3d 710 (CA10, 2006); and *Moulton v State*, 148 P3d 38 (Wy, 2006).

[36]*Bowker, supra*, at 60.

[37]Officer Goolsby testified that he wasn't sure about the cut hand, several years having passed since the incident.

was, (b) if he was okay, and (c) if anyone else inside needed help. Instead, he screamed and broke things. Thus, both Corbine and respondent lacked credibility, and the only *unreasonable* thing the police could have done in response in either case would have been to take their assurances at face value. As the Delaware Supreme Court said under similar circumstances, "the officers here reasonably disbelieved [the defendant's] statements because defendants' behaviors and their answers to questions did not make any sense."[38] So here.

Similarly, respondent will no doubt argue as he did below that, because the police did not call for EMS or any other medical assistance, and because they did not immediately enter upon arrival, they did not truly believe that anyone needed emergency care. This assumption is not necessarily true, but even if it were, it would not matter. First, in none of the cases cited in this brief does it appear that the police summoned EMS before entering. Yet, in none of the cases did this fact affect the validity of the entry. Perhaps the police decided to see if there was a person actually injured and, if so, how severely, before summoning medical help. Perhaps officers believed that they could render such aid themselves if needed. Perhaps they intended to convey any injured person to a nearby medical facility instead of waiting for an ambulance. Whatever the case, it does not necessarily follow, as respondent would have it, that the lack of a call to medical personnel means there was no emergency.

Second, and for similar reasons, just because officers decide not to enter immediately upon arrival

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[38] *Guererri, supra*, at 408 (internal quotation marks omitted).

does not prove that they really do not believe there is an emergency. As the Tenth Circuit noted in *Najar*:

> A delay caused by a reasonable investigation into the situation facing the officers does not obviate the existence of an emergency. . . . Here, the delay was due to the officers' repeated and increasingly vigorous attempts to make contact with the person they could see inside. To their credit, they did not simply batter down the door. We applaud their restraint and circumspection.[39]

Similarly, in *United States v Valencia*, the court rejected Valencia's claim that, because the officers did not enter his apartment until approximately 30 minutes after they had arrived, no emergency could have existed.[40] The officers did not just stand around during that time, but instead made a reasonable investigation of the report of shots fired. When they could not rule out the possibility that a shooter or a victim was still in the apartment, they justifiably entered.[41]

Third, even if the lack of a call to medical personnel and the failure to immediately enter did demonstrate that the officers discounted the possibility of an emergency, that conclusion would be irrelevant. Again, as this Court pointed out in *Brigham City*, the subjective motivations of the police

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[39] *Najar, supra,* at 719.

[40] *Valencia, supra,* at 816-17.

[41] *Id.*

do not matter.[42] If, under the circumstances, a reasonable inference exists that there might be an injured person inside a residence, the entry is justified even if the police do not subjectively believe it. Thus, again in *Valencia*, the court noted:

> While the officers' actions might suggest that they did not subjectively possess an overwhelming suspicion that they would find any victims or immediate threats in the apartment, we evaluate the constitutionality of the search by looking only to whether they had an objectively reasonable basis for believing that exigent circumstances necessitated warrantless entry into the apartment. For the reasons stated above, the facts of this case presented the officers with just such an objectively reasonable basis for the search, regardless of their subjective expectations when they broke down the door."[43]

This reasoning applies equally here. Regardless how much or how little Officer Goolsby and his partners actually believed that an emergency required that they enter, the objective circumstances provided a reasonable basis to believe that someone inside, including respondent, may have needed immediate care. That is all that is required. Judge Jackson and the Court of Appeals erred in ruling

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[42] *Brigham City, supra*, at 404, 1948.

[43] *Valencia, supra*, at 816-17 (internal quotation marks and citation omitted).

otherwise. Respondent's constitutional rights were not violated when the Brownstown police tried to determine if he or someone else needed their help. Respondent's assault with a dangerous weapon on Officer Goolsby should not have been suppressed. Certiorari should be granted.

I. B. To clarify that the basis for objectively necessary emergency-aid entries is the Reasonableness Clause of the Fourth Amendment. That is, because emergency-aid searches are not seizure-directed, the Warrant Clause of the Fourth Amendment does not apply, and so an officer's warrantless emergency-aid entry is justified as long as it is objectively reasonable.

As demonstrated above, when the facts of the present case are compared to similar cases decided around the country, it is evident that the Michigan state courts erred in finding Officer Goolsby's entry unconstitutional. For this reason Petitioner requests that certiorari be granted. Further, this court should order plenary review because, in these other cases, while the end result rarely varies, the legal justifications given in upholding the warrantless entries cannot be reconciled. Specifically, courts are in conflict as to (a) whether probable cause or reasonable suspicion should be the standard necessary to justify entry, and (b) whether these cases fall under the exigent-circumstances exception to the warrant requirement, whether they are justified by distinct police functions of "community caretaker" or "emergency-aid provider," or whether some combination of the three applies.

But as the Michigan Supreme Court alluded to in *People v Davis*, 442 Mich 1 (1993), the only

principled and logically consistent analysis of this issue holds that, because the searches in these cases are aimed at helping potentially injured victims, they are not "seizure directed," and thus their legality must be analyzed outside the exigent-circumstances exception to the warrant requirement.[44] This Court should grant certiorari to clarify that, because emergency entries do not require warrants (and cannot meet the requirements to obtain a warrant), they fall under the community-caretaking function of the police governed by the Reasonableness Clause, and not the Warrant Clause.

The text of the Fourth Amendment supports this proposition. Its first clause, the "Reasonableness Clause," states that

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .

The second, or "Warrant Clause," provides that

> . . . no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Thus, the Warrant Clause requires that seizure-directed searches be supported by probable cause, that the police particularly describe the place to be

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[44] *Davis, supra*, at 24.

searched and the persons or things to be seized, and that they obtain a warrant before entering a private dwelling or detaining a person. Therefore, when the police are acting in an investigative capacity searching for evidence of a crime, they must obtain a warrant before entering a home, unless an exigent circumstance prevents them from doing so in a timely manner.

But the Reasonableness Clause establishes that non-seizure directed searches are invalid only if unreasonable. In other words, when the police are fulfilling non-crime fighting functions (such as safeguarding the community), and in so doing need to enter a private home, they may do so without violating the Fourth Amendment as long as the entry is objectively reasonable under the circumstances. The framers no doubt had a very practical reason for this: in most emergency-entry cases, probable cause cannot possibly be shown, because the police cannot specifically describe in advance any items they plan to seize—*it is not their purpose to seize anything.*

A majority of this Court has yet to explicitly recognize the distinction between the Warrant and Reasonableness clauses, and this lack of authority results in much confusion among lower courts. Although courts instinctively recognize that it makes no sense to require probable cause to believe that a crime has been committed and that evidence of that crime will be found in the place to be searched when the police are merely trying to render emergency assistance, this Court has never fully developed this point, or even articulated a principled basis for distinguishing emergency entries from those requiring a warrant.

As a result, in some jurisdictions, the police are told they need probable cause to enter a house to

render emergency aid, but that this standard is met whenever officers reasonably believe someone inside may be in need of aid.[45] In others, the standard is simply objective reasonableness, but no principled justification is given for this rule.[46] In a third group, objective reasonableness justifies the entry, but probable cause must be shown to "associate the emergency with the area or place to be searched."[47] Again, this appears to be a framework created out of thin air. In a fourth category, even *unreasonable* searches may be permitted as long as there is no possibility that the police are involved in crime

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[45]See, e.g., *United States v Troop*, 514 F3d 405 (CA 5, 2008); *United States v Poe*, 462 F3d 997 (CA 8, 2006); *United States v Holloway*, 290 F3d 1331 (CA 11, 2002); *Moulton v State*, 148 P3d 38 (Wy, 2006).

[46]See, e.g., *State v Meeks*, 262 SW3d 710 (Tenn, 2008); *State v Bowker*, 754 NW2d 56 (SD, 2008); *United States v Klump*, 536 F3d 113 (CA 2, 2008); *United States v Gambino-Zavala*, 539 F3d 1221 (CA 10, 2008); *United States v Snipe*, 515 F3d 947 (CA 9, 2008); *United States v Bell*, 500 F3d 609 (CA 7, 2007); *United States v Valencia*, 499 F3d 813 (CA 8, 2007); *United States v Black*, 482 F3d 1035 (CA 9, 2007); *United States v Najar*, 451 F3d 710 (CA 10, 2006); *United States v Goree*, 361 United States App DC 161, 365 F3d 1086 (2004); *People v Ray*, 981 P2d 928 (Cal, 1999); *State v Applegate*, 626 NE2d 942 (Ohio, 1994); *United States v Reed*, 935 F.2d 641 (CA 4, 1991).

[47]See *State v Gill*, 755 NW2d 454 (ND, 2008); *Blake v State*, 954 A2d 315 (Del, 2008); *State v Lemieux*, 726 NW2d 783 (Minn, 2007); *Guererri v State*, 922 A2d 403 (Del, 2007); *State v Eberly*, 716 NW2d 671 (Neb, 2006); *Couden v Duffy*, 446 F3d 483 (CA 3, 2006); *United States v Martins*, 413 F3d 139 (CA 1, 2005); *People v Mitchell*, 347 NE2d 607 (NY, 1976).

fighting.[48] Finally, in Michigan, our Supreme Court seems unable to settle on a rule, holding alternatively that mere reasonableness suffices, and then that probable cause is necessary.[49]

This disparity is also evident in how courts relate emergency-aid circumstances to the warrant requirement. In many states and circuits, an emergency is simply one of a number of recognized exigent circumstances justifying a warrantless entry.[50] In others, emergency entries are part of the community-caretaking exception, which is a different

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[48]See, e.g., *State v Ryon*, 108 P3d 1032 (NM, 2005).

[49]Compare *People v Davis*, 442 Mich 1 (1993) (sound of gunfire would justify entry into motel room as part of community caretaking function because reasonable under the circumstances) with *In re Forfeiture of $176,598*, 443 Mich 261 (1993) (late night security alarm at private dwelling, light on inside home, broken window, security bars pushed aside, and lug wrench, bar, and skull cap under the window not sufficient to justify emergency entry under community caretaking; instead justified only under exigent circumstances, thus requiring probable cause).

[50]See, e.g., *State v Bowker*, 754 NW2d 56 (S.D., 2008); *United States v Gambino-Zavala*, 539 F3d 1221 (CA 10, 2008); *United States v Snipe*, 515 F3d 947 (CA 9, 2008); *United States v Klump*, 536 F3d 113 (CA 2, 2008); *United States v Valencia*, 499 F3d 813 (CA 8, 2007); *United States v Bell*, 500 F3d 609 (CA 7, 2007); *Couden v Duffy*, 446 F3d 483 (CA 3, 2006); *United States v Poe*, 462 F3d 997 (CA 8, 2006); *United States v Najar*, 451 F3d 710 (CA 10, 2006); *United States v Goree*, 365 F3d 1086 (CA D.C., 2004); *State v Applegate*, 626 NE2d 942 (Ohio, 1994); *United States v Reed*, 935 F2d 641 (CA 4, 1991).

branch from exigent circumstances.[51] Other places recognize a separate "emergency-aid doctrine," either as a discrete subset of exigent circumstances,[52] as a subset of community caretaking,[53] or as its own branch of the warrant-exceptions tree.[54] Still others consider community caretaking and emergency aid to be interchangeable terms.[55] Obviously, the lack of a coherent constitutional framework for understanding how and why the police may enter private homes to provide emergency aid has resulted in much confusion.

This Court has, unfortunately, provided little guidance. For example, in *Mincey v Arizona*, 437 US 385, 98 S Ct 2408 (1978), the Court indicated, not surprisingly, that emergency-aid searches need only

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[51]See, e.g., *State v Gill*, 755 NW2d 454 (ND, 2008); *State v Lemieux*, 726 NW2d 783 (Minn, 2007); *State v Ryon*, 108 P3d 1032 (NM, 2005); *People v Ray*, 981 P2d 928 (Cal, 1999).

[52]See, e.g., *State v Meeks*, 262 SW3d 710 (Tenn, 2008); *United States v Troop*, 514 F3d 405 (CA 5, 2008); *State v Eberly*, 716 NW2d 671 (Neb, 2006); *United States v Martins*, 413 F3d 139 (CA 1, 2005); *United States v Holloway*, 290 F3d 1331 (CA 11, 2002).

[53]See, e.g., *State v Ryon*, 108 P3d 1032 (NM, 2005), *People v Ray*, 981 P2d 928 (Cal, 1999); *People v Mitchell*, 347 NE2d 607 (NY, 1976).

[54]See, e.g., *Blake v State*, 954 A2d 315 (Del, 2008); *United States v Black*, 482 F3d 1035 (CA 9, 2007), *Guererri v State*, 922 A2d 403 (Del, 2007); *Moulton v State*, 148 P3d 38 (Wy, 2006).

[55]See, e.g., *State v Lemieux*, 726 NW2d 783 (Minn, 2007); *State v Gill*, 755 NW2d 454 (ND, 2008).

be reasonable.[56] But neither *Mincey* nor the precedent cited there identified or relied on the Reasonableness Clause as the basis for the emergency-aid doctrine,[57] nor even explicitly grounded the doctrine *anywhere* in the text of the Constitution. This was despite the fact that three Supreme Court justices had articulated the differences between the clauses just one month before *Mincey* was issued in June of 1978. See *Marshall v Barlow's, Inc.*, 436 US 307, 325-26, 98 S Ct 1816 (May 23, 1978) (Stevens, J., dissenting, joined by Blackmun, J., and Rehnquist, J.). That is, according to Justices Stevens, Blackmun, and Rehnquist:

> The Fourth Amendment contains two separate Clauses, each flatly prohibiting a category of governmental conduct. The first Clause states that the right to be free from unreasonable searches "shall not be violated"; the second unequivocally prohibits the issuance of warrants except "upon probable cause." In this case the ultimate question is whether the category of warrantless searches authorized by the statute is "unreasonable" within the meaning of the first Clause.[58]

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[56] *Davis, supra*, at 13.

[57] 437 US at 392, 98 S Ct at 2413.

[58] *Id.*

And at least one state supreme court—New Jersey's—has identified the difference between the clauses at issue:

> When the warrant clause is thus read as merely stating the reasonableness standard to be applied in a particular factual setting, the first clause can then be seen as embodying the ultimate standard against which to determine the legality of searches and seizures. When confronted with purposes, objects or circumstances not envisioned by the framers, the wiser, and indeed the proper course is to apply the reasonableness clause; not to automatically force the new situation into the warrant clause category.

State v Slockbower, 397 A2d 1050, 1060 (1979). Thus, not only does the text of the Fourth Amendment support the dual-clause analysis, and not only does that analysis provide the only principled justification for the emergency-aid doctrine, there is precedent for reading the Fourth Amendment that way. This Court should grant certiorari to firmly ground non-seizure directed searches in the Reasonableness Clause.

II. To establish that evidence of independent crimes is admissible regardless whether the warrantless entry was justified.

Even if Officer Goolsby had violated respondent's constitutional rights by entering without a warrant, that did not give respondent the right to assault him, and so the criminal act viewed by and perpetrated against Goolsby was still erroneously suppressed. Simply put, when a defendant commits an independent crime in reaction to an illegal entry, the evidence of that crime is not fruit of the poisonous tree, and must be admitted. That is, only that evidence which comes from exploiting the illegal search may be suppressed. In the case of independent crimes, the police cannot be said to have "exploited" the illegality of the entry, especially when the independent crime is an assault on an officer. Any other rule would give persons the green light to execute officers who, even innocently, violate a resident's Fourth Amendment rights. This simply cannot be and, as most courts that have considered this issue have found, is not the state of the law.

The Idaho Court of Appeals recently considered just such a case, and determined that, even if the police officers had illegally entered the defendant's home, they did not exploit this illegality when they saw the defendant shooting at them.[59] Looking to cases from the Fourth and Eleventh US Circuit Courts of Appeals, and decisions of the state

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[59] *State v. Deisz*, 186 P2d 682, 687 (Idaho, 2008).

courts of Colorado, Florida, Maine, Massachusetts, Minnesota, Montana, Oregon, South Dakota, and Washington,[60] the court wrote in *State v. Deisz* that "when a person physically attacks police officers or other government agents in response to an unlawful search or seizure, the exclusionary rule does not require suppression of evidence of the attack."[61] To the contrary, although the entry was a but-for cause of the shooting, and although the shooting was nearly simultaneous with the entry, the defendant's

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[60]See *United States v Sprinkle*, 106 F3d 613, 619 (CA 4, 1997); *United States v Bailey*, 691 F2d 1009, 1017 (CA 11, 1983); *People v Doke*, 171 P3d 237, 239 (Colo, 2007); *State v White*, 642 So2d 842, 844 (Fla Dist Ct App, 1994); *State v Boilard*, 488 A2d 1380, 1386 (Maine, 1985); *Commonwealth v Saia*, 360 NE2d 329, 332 (Mass, 1977); *State v Bale*, 267 NW2d 730, 732 (Minn, 1978); *State v Ottwell*, 779 P2d 500, 502 (Mont, 1989); *State v Burger*, 639 P2d 706, 708 (Oregon, 1982); *State v Miskimins*, 435 NW2d 217, 221 (SD, 1989); *State v Aydelotte*, 665 P2d 443, 447 (Wash Ct App, 1983). Other circuits have likewise held that the fruit of the poisonous tree doctrine does not apply to new crimes committed by an individual who is the victim of a Fourth Amendment violation. See, e.g., *United States v Pryor*, 32 F3d 1192, 1195-96 (CA 7, 1994) (giving false social security number to police officers); *United States v Smith*, 7 F3d 1164, 1167 (CA 5, 1993) (threatening the President); *United States v Mitchell*, 812 F2d 1250, 1253 (CA 9, 1987) (same); *United States v Garcia-Jordan*, 860 F2d 159, 161 (CA 5, 1988) (making false statements to border patrol officials); *United States v King*, 724 F2d 253, 256 (CA 1, 1984) (shooting at police officers); *United States v Bailey*, 691 F2d 1009, 1017 (CA 11, 1982) (fleeing from police and resisting arrest).

[61] *Deisz, supra*,. at 686.

independent actions broke the causal connection.[62] Even if the defendant's actions were reasonable and could support a meritorious self-defense claim, the exclusionary rule would not require that the evidence of the assault be suppressed.[63] Thus, even if the officers' entry was illegal and precipitated the defendant's attack, their testimony that the defendant shot at them was admissible.[64] Any other result "would effectively give the victim of police misconduct carte blanche to respond with any means, however violent."[65]

As Professor LaFave has pointed out, this analysis applies not only to assaults on the police, but to instances in which a defendant (a) flees from an entering officer, (b) attempts to bribe the police, (c) threatens the officer with harm should he testify against the defendant, or (d) makes some criminal misrepresentation in an effort to bring the incident to a close.[66] In all these cases, even if the entry was improper, it makes no sense to consider the defendant's actions to be "exploitations" of the illegal entry. That is, when the police enter to stop or investigate crime (or, in this case, to render emergency aid)—they are not attempting to goad the defendant into committing a new offense. When they do illegally enter and find evidence of the crime they

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[62] *Id.* at 686-87.

[63] *Id.* at 687 n3.

[64] *Id.* at 687.

[65] *Id.* (citation and internal quotation marks omitted).

[66] 6 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* 377 § 11.4 (and cases cited therein).

are investigating, those fruits are generally suppressed. But when officers observe a new crime being committed, according to sound logic and Professor LaFave, "the critical fact is that there has been no exploitation of the prior illegality" and so the evidence is admissible.[67]

Here, respondent's actions were in no way reasonable, and certainly not as a matter of law. There is absolutely no evidence that Goolsby had his weapon drawn, that he said anything threatening, or that he posed of any kind of physical harm to respondent. Respondent has never even claimed that he acted in self-defense. To the contrary, respondent was aware that the intruders were police officers and that the only danger he perceived was temporary detention and loss of liberty. Even in the unlikely event that respondent could accurately determine whether this perceived danger to his liberty was constitutionally impermissible, that is not the kind of threat that justifies the use of force in self-defense.

It would be anomalous indeed were this Court to allow a resident to threaten an entering officer with a firearm if it turns out that the officer's entry was improper. Unless the exclusionary rule operates to give homeowners a license to assault police officers in the performance of their duties, evidence of respondent's actions toward Goolsby must be admitted in this case regardless whether the latter's entry was justified. Again, not only should certiorari be granted to reverse the Michigan state courts, review is necessary so that this Court may settle this important issue once and for all.

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[67] Id.

Conclusion

Brigham City and similar cases around the country demonstrate that the Michigan state courts here grievously erred in finding Officer Goolsby's actions unreasonable (and thus unconstitutional). Certiorari should be granted to overturn that erroneous holding. More importantly, certiorari should be granted so that this Court can articulate a principled framework for the emergency-aid doctrine. Finally, certiorari should be granted so that any doubt is eliminated as to a resident's right to use self-help in enforcing his Fourth Amendment rights. Citizens should not, under protection of law, be enabled to assault police officers in the performance of their duties.

RELIEF

Therefore, the Petitioner requests that certiorari be granted.

Respectfully submitted,

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Appendix A: Court of Appeals Opinion

COURT OF APPEALS OF MICHIGAN

PEOPLE of the State of Michigan, Plaintiff-Appellant,
v.
Jeremy FISHER, Defendant-Appellee.

Docket No. 276439.

March 25, 2008.

Wayne Circuit Court; LC No. 04-000969.

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

In this prosecutor's appeal, plaintiff appeals by delayed leave granted from the circuit court's order granting defendant's motion to suppress evidence. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

Defendant was charged with assault with a dangerous weapon, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b, when a police officer opened the front door of a residence and defendant pointed a rifle at him. The charges were dismissed, however, when the trial court granted a motion to suppress the evidence of what the police observed in the house, on the ground that that evidence was the product of an unlawful search. Plaintiff appealed to this Court, which held that the trial court had erred in deciding the suppression motion without conducting a full

evidentiary hearing. *People v Fisher*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2005 (Docket No. 256027). On remand, the trial court conducted an evidentiary hearing, then again granted the motion to suppress.

Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). See also Const 1963, art 1.§11. In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, but review the legal conclusion de novo. See *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999).

Plaintiff maintains that the police were justified in conducting the warrantless search in question, insofar as they acted out of concern that someone inside the home might be in need of medical assistance. Plaintiff thus invokes the emergency-aid exception to the warrant requirement, whereby a police officer may enter a building to assist someone in need of immediate aid. *People v Davis*, 442 Mich 1, 25; 497 NW2d 910 (1993); *City of Troy v Ohlinger*, 438 Mich 477, 483-484; 475 NW2d 54 (1991). However, the scope of the permitted entry is governed by the emergency. *Id.* At 484. Accordingly, the police "may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance." *Davis. supra* at 26.

At the evidentiary hearing, a police officer recounted that a pedestrian had complained to him and his partner of a man "going . . . crazy," and that at the

location in question, the officer found defendant "walking around the residence screaming and throwing stuff." The officer added that the house had three "smashed out" windows, with broken glass still on the ground. According to the officer, as he approached the house, he observed some damaged fence posts, and a parked truck whose front was "smashed." The officer further testified that there was some apparently fresh blood on the hood of the truck, on some clothes inside the truck, and on the back door of the residence. According to the officer, defendant refused to answer a knock, then, when the police persisted and asked if he needed medical attention, answered with profanity. The officer described noticing a cut on defendant's hand. The officer explained that the police decided to enter the residence, because of indications that there was an injured person on the premises, and because they did not know if there was anyone else inside. The officer testified that he opened the front door, upon which defendant pointed a rifle at him.

On cross-examination, the officer admitted that he had not known whether defendant drove the truck at the scene, how the fence was damaged, or whether anyone in the house actually needed medical assistance. The officer further admitted that he observed no large quantity of blood in view, but rather mere drops.

The trial court concluded, "based on what I've heard here, I'm even more convinced" that the search in question was an improper entry, and thus that its duty was to suppress the evidence of the resulting gun-pointing incident. We agree.

Although there was evidence that there was an injured person on the premises, the mere drops of blood did not signal a likely serious, life-threatening injury. This is particularly so given that the police observed a cut on defendant's hand, which likely explained the trail of blood, but also that defendant was very much on his feet and apparently able to see to his own needs. Because "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed . . . ," *United States v United States Dist Court*, 407 US 297, 313;92 S Ct 2125; 32 L Ed 2d 752 (1972), the trial court correctly recognized that the situation the police witness described in this case did not rise to a level of emergency justifying the warrantless intrusion into a residence.

Plaintiff alternatively argues that, even if the police officer acted unlawfully in forcing entry into the residence, the evidence of defendant's assaultive response was nonetheless admissible.[1] However, this argument was not raised below, and therefore is not preserved for appellate review. See *People v Carines*, 460 Mich 750, 767; 597 NW2d 130 (1999); *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994). Moreover, an appeal by right following a remand is

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[1]See *People v Daniels*, 186 Mich App 77, 82 NW2d 131 (1990)("the exclusionary rule does not act to bar the introduction of evidence of the independent crimes directed at police officers as a reaction to an illegal arrest or search" [dictum]). But see *People v Dillard*, 115 Mich App 640, 642 321 NW2D 757 (1982) (a defendant who pointed a gun at a police officer in response to an illegal entry, but who neither fired the weapon nor otherwise caused any injury, acted reasonably and thus did not commit the crime of felonious assault).

limited to issues arising from the remand. *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975). In this case, the scope of the remand was limited to obtaining a decision on the legality of the warrantless intrusion into the residence on a full evidentiary record. Because the proper opportunity to raise this alternative argument, even as an unpreserved issue, was in the first appeal, it is not properly before this Court in the second.

Affirmed

/s/ Mark J. Cavanagh

/s/ Brian K. Zahra

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE of the State of Michigan, Plaintiff-Appellant,
v.
Jeremy FISHER, Defendant-Appellee.

Docket No. 276439.

March 25, 2008.

Wayne Circuit Court; LC No. 04-000969.

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

Talbot, P.J. (dissenting)

I respectfully disagree with the majority opinion, as I believe the police were justified in entering defendant's home pursuant to the emergency aid and/or community caretaker exceptions to the warrant requirement. Consequently, I would reverse the trial court's order granting defendant's motion to suppress evidence.

Testimony demonstrated the police received a call regarding a disturbance in the area. While proceeding to the location, police were stopped by individuals that indicated a man was "going . . . crazy" at the identified location. Upon arrival at the scene, the officer observed the residence involved had several broken windows, apparently of recent origin. Also observed, within the immediate periphery of the house were damaged fence posts and a parked vehicle

with a "smashed" front. In addition, the officer observed fresh blood on the hood and clothes inside of the vehicle, and a small amount of blood on one of the entry doors to the residence.

When the officer knocked on the door and inquired whether defendant needed assistance, he was met with profanity. Defendant neither confirmed nor denied the need for medical assistance. The officer observed, through a window, that defendant was walking around inside the residence while screaming and throwing items. The officer could hear items breaking but could not determine or identify what items defendant was throwing or their target. The officer further determined that one door to the residence was locked and another was barricaded by furniture.

Believing either defendant or someone else in the home might be injured or in need of assistance, the officer attempted to enter the home. He pushed open the barricaded front door approximately twelve to eighteen inches, which was sufficient for him to observe inside the residence. The officer saw defendant with a dog, seated in the bedroom, and at this point defendant pointed a rifle at the officer who immediately retreated and did not attempt further entry.

The majority opinion appears to rely on the trial court's findings that the officer could not know or determine whether defendant had actually driven the damaged vehicle and whether the problems with the fence posts were of a recent occurrence in affirming the suppression order. In addition, it was noted that the amount of blood observed by the officer was not large and therefore did not "signal a likely serious

[or] life-threatening injury." As a result, the majority concurred with the trial court's determination that the "the situation the police witness described in this case did not rise to a level of emergency justifying the warrantless intrusion into a residence." However, this ruling appears to confuse the need for only a reasonable and articulable basis for entry under the emergency aid doctrine rather than exigent circumstances or with the necessity for probable cause in conducting a residential search when criminal activity is suspected. In response to this appeal, defendant further contends the police were not motivated by concern regarding the need to secure medical assistance based on the fact that they did not seek or call for a medical unit to the scene and awaited the procurement of a warrant before attempting another entry into the residence.

In accordance with the emergency aid exception to the search warrant requirement, police may enter into a dwelling or residence without a warrant if they reasonably believe that someone inside requires immediate aid or assistance. *People v Beuschlein*, 245 Mich App 744, 756; 630 NW2d 921 (2001). Police are required to "possess specific and articulable facts" supporting their determination of the need to render immediate aid, and may only do what is reasonably necessary to determine whether an individual actually requires assistance and to provide that assistance. *Id.* Unlike other recognized exceptions to the warrant requirement, under the emergency aid exception police are not required to have probable cause for their entry, *People v Davis*, 442 Mich 1, 11-12; 497 NW2d 910 (1993). Rather, it is deemed sufficient if the police possess a reasonable belief that an individual is in need of immediate assistance before entering the dwelling. *Id.* At 20.

I believe the testimony and evidence provided was sufficient to support the officer's attempted entry into defendant's home. Police had received a call regarding a disturbance at the location and en route citizens indicated an individual at the location was engaged in disruptive and suspect behavior. Upon arrival, the officer observed damage to a vehicle and structures on the property, evidence of recent blood and defendant behaving in a bizarre manner, screaming and throwing objects with broken windows to the residence. When police attempted to engage defendant and verbally ascertain his need for assistance they were met with expletives and received neither affirmance nor denial of the need for aid. Contrary to the majority's opinion, I believe police had sufficient reasons, which were articulated, to attempt entry into the home. There is no requirement, with regard to the emergency aid exception that the emergency solely constitute an immediate medical emergency. Given defendant's bizarre behavior, it was reasonable for officers to surmise that he might need medical or psychiatric intervention to prevent him from incurring injury. Further, the mere observation of an injury to defendant's hand is not dispositive of his need or lack of need for aid. The very fact that police observed an injury, coupled with defendant's behavior, made it reasonable to surmise that he may have additional injuries, which were not readily observable, particularly given the condition of the vehicle and fence posts surrounding the home. Defendant argues on appeal that the failure to secure emergency medical services to the scene was inconsistent with assertions by police necessitating entry in accordance withe the emergency aid exception. Contrary to this assertion, the physical withdrawal by police merely complied with the limitations imposed by this

doctrine to intrude no further than was reasonably necessary to ascertain defendant's physical condition was such that the provision or need for medical intervention could be delayed.

In addition, I would assert that the actions of police were also justified in accordance with the community caretaking exception as recognized in *Davis*. *Davis, supra* at 20-26. The Court indicated that the emergency aid exception comprised an aspect of the more general "community caretaking functions" routinely engaged in by police. *Id.* At 25. The community caretaking function has been defined as encompassing "a variety of functions" that are "separate" and distinct from police "duties to investigate and solve crimes." *Id.* At 20. Notably, "[w]hen police, while performing one of the these functions, enter into a protected area and discover evidence of a crime, this evidence is often admissible." *Id.* The *Davis* Court opined "that entries made to render aid to a person in a private dwelling were part of the community caretaking function." *Id.* at 23. Contrary to defendant's assertion, the application of this doctrine does not require or necessitate that police be responding to known or suspect criminal activity before acting or intervening.

Given the reports made to police and their own observation of defendant's bizarre and oppositional behavior, along with the circumstantial physical evidence of injury or accident, it was neither unreasonable nor unjustified for police to attempt to enter defendant's home to intervene and determine the severity of his behavior and whether it was escalating and constituted an endangerment to himself or someone else, albeit heretofore unidentified or undetected, as part of their routine

community caretaking functions. As a result, I would reverse the trial court's order suppressing the evidence subsequently obtained by police.

/s/ Michael J. Talbot

APPENDIX B: Michigan Supreme Court Order

Michigan Supreme Court

Lansing, Michigan

ORDER

May 22, 2009

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellant	SC: 136591
v	COA: 276439
JEREMY FISHER	Wayne CC: 04-000969
Defendant-Appellant	

_____/

On order of the Court, leave to appeal having been granted and the briefs and oral arguments of the parties having ben considered by the Court, we VACATE our order of October 3, 2008. The application for leave to appeal the March 25, 2008 judgment of the Court of Appeals is DENIED, because we are no longer persuaded that the questions presented should be reviewed by this Court.

WEAVER, J. (dissenting)

I dissent from this Court's order and conclusion that leave was improvidently granted because, after hearing oral argument, I would reverse the judgment of the Court of Appeals for the reasons stated in Judge Talbot's dissent.

YOUNG, J. (dissenting).

I dissent from this Court's order denying leave to appeal. I would reverse the judgment of the Court of Appeals because the police officer's entry into the defendant's home was lawful under the emergency aid exception to the Fourth Amendment of the United States Constitution.

Officer Chris Goolsby and his partner responded to a noise disturbance on Steven Road in Brownstown, Michigan. When they arrived, two pedestrians informed Officer Goolsby that there was a man on adjoining Allen Road who was "going crazy." The officers went to Allen Road and saw a man later identified as defendant, Jeremy Fisher, through the front window of a house "walking around the residence screaming and throwing stuff." Officer Goolsby could hear objects breaking. Officer Goolsby observed that a truck parked in the driveway had a damaged front end and that fence posts along the property line had been knocked down. When the officers tried to speak with defendant, he repeatedly swore at them and told them to get a search warrant. Officer Goolsby observed fresh blood on the hood of the truck, some clothes inside the truck, and the back door. Officer Goolsby believed that he a cut on defendant's hand. The officers also observed that three house windows had been broken and the glass was still outside on the ground.

Officer Goolsby testified that he attempted to enter the house "[b]ecause we did not know if there's somebody else inside" and he was concerned that someone else was inside "[b]ecause of the amount of blood we found on the outside." Officer Goolsby was able to open the front door, but only 12 to 18 inches

because a couch was blocking it. Officer Goolsby heard a dog bark, looked to his right, through the glass of the door, and saw defendant sitting on his bed and pointing a rifle at Officer Goolsby. Officer Goolsby retreated.

Defendant was subsequently arrested and charged with felonious assault[1] and possession of a firearm during the commission of a felony.[2] Defendant sought to suppress Officer Goolsby's testimony about the rifle incident, arguing that it was obtained in violation of his Fourth Amendment rights. The prosecutor argued that Officer Goolsby's entry was lawful under the emergency aid exception to the Fourth Amendment. The trial court granted defendant's motion without an evidentiary hearing. The prosecutor appealed and the Court of Appeals majority reversed and remanded for an evidentiary hearing.[3] On remand, the trial court held an evidentiary hearing and again granted defendant's motion.

The prosecutor again sought leave to appeal. The Court of Appeals granted leave and affirmed in a split, unpublished opinion.[4] The Court of Appeals

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[1] MCL750.82

[2] MCL 750.227b

[3] *People v Fisher*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2005 (Docket No. 256027).

[4] *People v Fisher*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2008 (Docket No. 276439)(hereinafter referred to as *Fisher II*).

majority held that the emergency aid exception to the Fourth Amendment did not apply because

> [a]lthough there was evidence that there was an injured person on the premises, the mere drops of blood did not signal a likely serious, lifethreatening injury. This is particularly so given that the police observed a cut on defendant's hand, which likely explained the trail of blood, but also that defendant was very much on his feet and apparently able to see to his own needs.[5]

Judge Talbot dissented and argued that Officer Goolsby's entry was lawful under the emergency aid doctrine because

> [g]iven defendant's bizarre behavior, it was reasonable for officers to surmise that he might need medical or psychiatric intervention to prevent him from incurring injury. Further, the mere observation of an injury to defendant's hand is not dispositive of his need or lack of need for aid. The very fact that police observed an injury, coupled with defendant's behavior, made it reasonable to surmise that he may have additional injuries, which were not readily observable, particularly given the condition of the

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[5] *Fisher II* at 2.

vehicle and fence posts surrounding the home.[6]

The prosecutor sought leave to appeal, which this Court granted.[7]

"We review a trial court's factual finding in a ruling on a motion to suppress for clear error. To the extent that a trial court's ruling on a motion to suppress involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo."[8]

Under the emergency aid exception to the Fourth Amendment, "a police officer may enter a dwelling without a warrant when he reasonably believes that a person inside is in need of medical assistance."[9] Under this standard, probable cause is not required for entry[10] and "[t]he officer's subjective motivation is irrelevant."[11]

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[6] *People v Fisher*, unpublished dissenting opinion by Talbot, J., filed March 25, 2008 (Docket No. 276439) (hereinafter referred to as *Fisher* II dissent)

[7] *People v Fisher*,482 Mich 1007 (2008).

[8] *People v Attebury*, 463 Mich 662, 668 (2001); see also *People v Williams*, 472 Mich 308, 313 (2005).

[9] *City of Troy v Ohlinger*, 438 Mich 477, 481 (1991); see also *People v Davis*, 442 Mich 1, 25-26 (1993).

[10] *Davis, supra* at 11, 26

[11] *Brigham City* v Stuart, 547 US 398, 404 (2006). The United States Supreme Court also added that "[a]n action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justified

Faced with an irrational and violent man, who was creating a disturbance and not responding to the police officers, and a blood trail leading from a truck to the house, Officer Goolsby could reasonably believe that someone inside, including defendant, needed medical assistance. Indeed, as Judge Talbot observed, "it was reasonable for officers to surmise that [defendant] might need medical or psychiatric intervention to prevent him from incurring injury."[12]

The Court of Appeals majority's reliance on the "mere drops of blood" to suggest that there was no "signal of a likely serious, life-threatening injury" is misplaced.[13] The United States Supreme Court rejected a similar argument in *Brigham City, supra*. In that case the officer was called to a noise disturbance at 3:00 a.m. and observed a juvenile punch an adult in the mouth, resulting in a bloody lip. The Utah Supreme Court held that the officer's subsequent entry was unlawful because "the injury caused by the juvenile's punch . . . did not give rise to an 'objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or

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[the] action." *Id.*, quoting *Scott v United States*, 436 US 128, 138 (1978) (emphasis added in *Brigham City*). See also *People v Williams*, 472 Mich 308, 314 n 7 (2005) ("The reviewing court considers the objective facts relating to the [seizure]; the officer's subjective state of mind is not relevant to the determination whether detention was proper.").

[12] *Fisher II* dissent at 2.

[13] *Fisher II* at 2.

dead [was] in the home.'"[14] The United States Supreme Court reversed and explained:

Nothing in the Fourth Amendment required them to wait until another blow rendered someone "unconscious" or "semi-conscious" or worse before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided. [15]

A similar analysis applies here. Although the "mere drops of blood" might indicate a minor injury, nothing required the officers to have confirmation of a severe injury. Moreover, the cut on defendant's hand was only one explanation for the trail of blood. The cut also indicated a physical altercation, which could have reasonably led Officer Goolsby to believe that defendant injured someone else. All of the evidence pointed to the fact that the defendant may have needed psychiatric attention.

Because the facts supported a "reasonabl[e] belie[f] that a person inside [was] in need of medical assistance," I would reverse the Court of Appeals judgment and remand the case for further proceedings.

CORRIGAN, J., joins the statement of YOUNG, J.

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[14] *Brigham City, supra* at 401-402, quoting *Brigham City v Stuart*, 122 P3d 506, 513 (Utah, 2005).

[15] *Brigham City, supra* at 406.

OPPOSITION BRIEF

(2)

No. 09-91

Supreme Court, U.S.
FILED
AUG 2 1 2009
OFFICE OF THE CLERK

In The

Supreme Court of the United States

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

v.

JEREMY FISHER,

Respondent.

On Petition For Writ Of Certiorari To The Michigan Court Of Appeals

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

I.

The Michigan Supreme Court, the Michigan Court of Appeals and the trial court all properly decided that the police officers may not enter a home without a warrant because, under the attending circumstances, it was not reasonable to believe that the person inside was in need of immediate medical assistance.

Despite the police officers finding droplets of blood outside on Defendant's truck, on a fence post and on the door, no medical aid (i.e., ambulance, EMS) was called to the scene at any time.

Against this backdrop, the question presented is:

Whether the emergency aid exception to the Fourth Amendment prohibition of searches without a warrant applies to this case.

II.

The alleged assault on the police officer is not a United States Constitutional issue. This is a matter of state criminal law and this Court should not become involved.

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INTRODUCTION

The petition presents no sound basis for this Court to exercise jurisdiction. On October 3, 2008, the Michigan Supreme Court granted Petitioner's leave to appeal the lower court of appeal's judgment. After oral argument, however, the Michigan Supreme Court then vacated its October 3, 2008, Order and **denied** Petitioner's request for leave to appeal, stating that it was no longer persuaded that the questions presented should be reviewed by that Court.

STATEMENT OF FACTS

According to Detective Dayfield's testimony under oath around 7:17 p.m. on 10/31/03, police officers Goolsby and Dixon went to 27092 Allen Road and observed a white male inside the residence breaking objects. They approached the south door, knocked, identified themselves as police officers, and tried to make contact, but were told "F.U., get a search warrant." Police Officer Goolsby then found the front door unlocked and attempted to make entry and was able to open the door twelve (12) inches because a couch was in front of the door. Goolsby advised Defendant to come to the door " . . . [b]ut the defendant again while looking out at the officers basically said again, 'f.u. get a search warrant or you're not coming in.'" Defendant continued making these statements to the officers. (2/27/04 Tr. of Proceedings on

Defendant's Motion to Quash Information or For Evidentiary Hearing at p. 4)

The police officer *at this time* investigated the scene and found blood on the outside of a vehicle, inside the vehicle and a small droplet of blood on the front door of the residence. At this time, the police officers again went to the home and noticed the Defendant had a cut hand. Police Officer Goolsby again went to the front door and was able to open it approximately eighteen (18) inches, again was told he could not enter without a warrant when he heard a dog bark from the bedroom area on the east side of the house and he looked through a partially opened blind and saw Defendant sitting up on the bed with a dog lying between his legs. Goolsby testified that Defendant Fisher raised a long gun and pointed it at him, at which point Goolsby retreated. (2/27/04 Tr. at p. 5)

Police Officer Goolsby testified at an evidentiary hearing on 12/19/06 that he could identify Defendant in court as the man in the house, that he saw some small drops of blood on the truck, on some clothes in the truck and on the door to the house. (12/19/06 Tr. at p. 9) Goolsby further testified that Defendant was seen walking around in his home and he had a cut hand. Police Officer Goolsby asked if *he* needed medical attention. Defendant responded to the police with profanities: "It was F.U. get a search warrant, which he kept repeating over and over." (12/19/06 Tr. at p. 11) There is no testimony that Fisher was ever asked if he resided there. The police then attempted

to enter the residence after being told to get a search warrant and at the point the door was being pushed open, Defendant was again saying "F.U., get a search warrant." (12/19/06 Tr. at pp. 18-19) Police Officer Goolsby admitted:

1. He did not see Fisher drive the pickup;
2. He did not see how the fence was damaged;
3. He had no knowledge anyone in the home was in need of immediate medical assistance;
4. He never asked if anyone else was in the home;
5. He never asked if anyone else needed medical attention; and
6. The blood was in drops and on the door was barely a touch of blood. (12/19/06 Tr. at pp. 19-20)

Police Officer Goolsby, on re-direct, opined that there was the *possibility* that someone could be in need of aid and inside the house. (12/19/06 Tr. at p. 22) There was no testimony that Defendant was attempting to leave. There is no evidence that EMS was ever called.

On 10/31/03 at 23:57 hours, a search warrant was obtained. The morning of 11/1/03, Mr. Fisher voluntarily came out of the house, unarmed.

COUNTER-STATEMENT OF THE CASE

Background And Summary Of The Decisions Below.

The Petitioner misstates the facts at p. 12 because Police Officer Goolsby attempted to enter the home, then was told he could not without a warrant, then observed the blood on the truck, clothes inside and a small droplet on the door. He then observed the Defendant had a cut hand and then again decided to enter and was told he could not without a warrant. Police Officer Goolsby testified that he did not have any knowledge that anyone in the home was in need of immediate medical aid. (12/19/06 Evidentiary Hearing Tr. at p. 19) This bootstrapping attempt at a "medical emergency" exception to the Fourth Amendment is shown to be bogus by the fact that **EMS was never called**. Various police agencies and SWAT teams were called, but ***no medical personnel***.

The trial court made the right decision initially and again after the evidentiary hearing. The Michigan Court of Appeals made the right decision. The Michigan Supreme Court also got it right when, after further review and oral argument, it vacated its prior order granting leave to appeal.

REASONS FOR DENYING THE PETITION

I. Under The Particular Facts Of This Case, There Is Nothing That Warrants An Intrusion Into Someone's Home Without A Warrant.

Consideration of the questions presented is inappropriate on the facts of this case. This Court should not spend its time distinguishing one set of case facts from another.

The Petitioner wants to extend the medical emergency exception to "possible" medical emergencies. Virtually anything is "possible." We should not scrap the Fourth Amendment based on possibilities. (12/19/06 Tr. at p. 22) If citizens in their home are not protected by the Fourth Amendment, when are they protected?

The primary case relied on by Petitioner, *Brigham City v. Stuart*, 547 U.S. 398, 126 S. Ct. 1943 (2006), is quite dissimilar to the present factual situation. In *Brigham*, the officers at the scene actually witnessed an altercation, saw a juvenile being forcibly restrained, saw the juvenile break free and punch one of the adults who was injured, and saw the adult spit blood. The police had a basis to enter to render emergency aid to a person they saw assaulted and injured. There are no such facts in the present case. That prior to the second attempt to enter, the Defendant may have had a small cut on his hand, is not sufficient to allow a warrantless entry based on a medical emergency, especially when a good

deal of time had passed and no EMS or medical personnel had been called.

II. There Is No Allegation Defendant Had Committed A Crime Before He Allegedly Pointed A Long Gun At The Officer Who Was Attempting A Second Illegal Entry.

The only crime alleged is this alleged assault. During the entire course of events, the Defendant was saying to the police that they could not enter without a warrant. The alleged assault is not an United States Constitutional issue but, rather, a matter of state criminal law and this Court should not become involved in this issue.

The alleged assault does not fall within any of the considerations as delineated in United States Supreme Court Rule 10.

CONCLUSION

The Petition is unfounded, and there is no sound basis in law or in fact to support it.

Respondent Jeremy Fisher respectfully requests that the Petition be denied.

Respectfully submitted,

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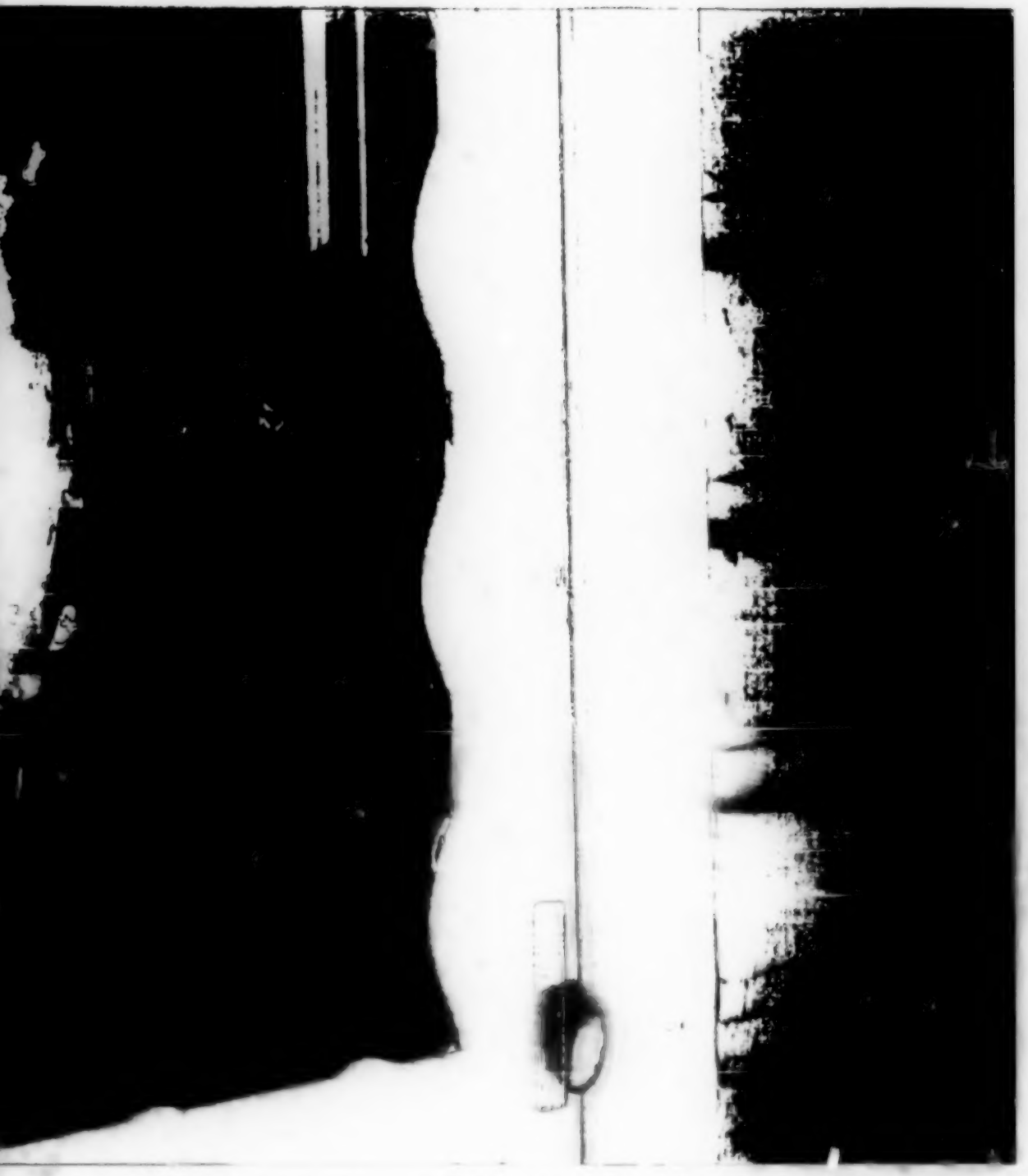

(The above photo depicting the small droplet of blood is attached as Ex. 4 to Defendant Jeremy Fisher's 1/25/06 Application for Leave to Appeal which is part of the record and file in the lower courts.)

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